

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Joshua J. Gipson,

Petitioner

v.

Ronald Oliver, et al.,

Respondents

Case No. 2:23-cv-00099-CDS-DJA

**Order Granting Unopposed  
Motion for Stay**

[ECF No. 47]

This matter is before the court on petitioner Joshua J. Gipson's unopposed motion for a stay. ECF No. 47. This court is authorized to stay a habeas matter to allow a petitioner to present unexhausted claims to the state court. *Rhines v. Weber*, 544 U.S. 269, 273–75 (2005). *Rhines* allows for a stay if “(1) the petitioner has ‘good cause’ for his failure to exhaust his claims in state court; (2) the unexhausted claims are potentially meritorious; and (3) there is no indication that the petitioner intentionally engaged in dilatory litigation tactics.” *Wooten v. Kirkland*, 540 F.3d 1019, 1023 (9th Cir. 2008) (citing *Rhines*, 544 U.S. at 278). The court finds that a stay is appropriate. Although a new state habeas petition will be procedurally barred as untimely, Gipson has a colorable actual innocence argument he can make to the state courts to overcome that procedural bar. See ECF No. 47 at 3–4. Moreover, Gipson's ineffective assistance of counsel claims, which were not previously raised before the state court, are not patently meritless, and Gipson has not engaged in intentionally dilatory litigation tactics.

Conclusion

It is therefore ordered that the unopposed motion for stay [ECF No. 47] is granted.

It is further ordered that Gipson move to reopen this action within thirty days of issuance of the remittitur by the Supreme Court of Nevada at the conclusion of the state court proceedings.

The Clerk of Court is kindly directed to stay and administratively close this action.

Dated: February 12, 2025



Cristina D. Silva  
United States District Judge